



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

February 2, 2016

Adam Kron  
Attorney  
Environmental Integrity Project  
1000 Vermont Avenue NW, Suite 1100  
Washington, D.C. 20005

RE: Issuance of VPDES Permits: VA0C40001, VA0C40002, VA0C40003, VA0C40004,  
VA0C40005, VA0C40006.

Dear Mr. Kron,

Thank you for your comments on the proposed issuance VPDES Permits VA0C40001, VA0C40002, VA0C40003, VA0C40004, VA0C40005, VA0C40006 to Murphy-Brown LLC. Please find enclosed a response to comments received during the public comment period. The permit is effective from February 2, 2016 through February 1, 2021. If you would like a copy of the final permit and supporting documentation please contact me at (804)-527-5132 or [seth.mullins@deq.virginia.gov](mailto:seth.mullins@deq.virginia.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Seth Mullins".

Seth Mullins  
Enclosed:  
Public Comment Responses

## **II. Comment: The Draft Permit Authorizes a Category of Discharges Not Allowed by the CWA or its Regulations**

**DEQ Response:** The permit applications, draft permit Fact Sheets, and draft permits were reviewed by EPA prior to the commencement of the public notice and comment period. EPA and DEQ worked closely formulating the language in Part I.A.1., and on July 16, 2015, EPA approved the draft permits which were ultimately noticed for public review and comment in the Sussex-Surry Dispatch on October 21<sup>st</sup> and October 28<sup>th</sup>, 2015.

As described in the permit application, subsequent submittals and draft permit fact sheets, the secondary containment structures will be operated in such a manner that will not result in process wastewater discharges of contaminants to State Waters. The draft permit requires secondary containment structures at each of these farms. The draft permit requires no discharge of process wastewater from the production area except during a 25 year/24 hour storm event, in which a discharge may occur.

The secondary containment procedure which was provided to DEQ by Murphy-Brown during the application phase of this permitting process is attached.<sup>1</sup> The procedure document states that the secondary containment structures are designed to capture any manure or process wastewater that might spill or leak from its primary containment structure or plumbing and describes how the secondary containment structure will be operated on a daily basis. The outlets of the secondary containment structures will be operated normally in a closed position. The supplemental information submitted<sup>2</sup> by the permittee addresses more specifically what happens to any recovered contaminants coming from a wastewater leak or spill within the production area. If a spill or leak is detected, the supplemental submittal states that "the water would be pumped either back into the [waste treatment] lagoon or recovered and land applied to an application field." Therefore, the operation of the secondary containment structures will not result in discharges of contaminants to State Waters.

The storm water discharge condition in Part I.A.1.b is consistent with the Federal CAFO Rule, recognizing that there will be discharges of typical storm water from the containments to maintain the dry storage volume, as described in the procedure. The permit conditions related to storm water discharges, including the visual monitoring requirements, originated from and mirror the conditions found in the VPDES industrial storm water permit regulation. While the Federal CAFO Rule does not require monitoring, the visual monitoring conditions are included as an extra measure to ensure that the operation of the secondary containment structures do not result in the discharge of contaminants resulting from a failure such as a spill or leak of manure or process wastewater.

The draft permit allows exemptions from monitoring under certain conditions. For instance, if adverse weather conditions exist, the monitoring is not required. It is not the intent of the permit to put the permittee in harm's way in order to perform monitoring. Additionally, during any monitoring period where no storm event occurs the valve will remain closed and in this situation the secondary containment will remain empty and operating as intended. Based on the operation

---

<sup>1</sup> See attachment (MB035 Secondary Containment.pdf)

<sup>2</sup> See attachment (RE M-B Secondary Containment Procedure.htm)

of the production areas and the secondary containment structures at the Murphy-Brown Farms, it is not necessary to perform chemical analysis of the samples taken during the visual monitoring. Any samples which fail the visual monitoring will trigger the mitigation procedure as outlined by Murphy-Brown (see attachment MB035 Secondary Containment document).

As stated in the draft permit Fact Sheets, these facilities are operated to be in compliance with a zero discharge from the production area, which includes the animal housing, waste handling, and waste storage areas as well as the secondary containment structures. Other non-production area discharges are addressed through the use of Best Management Practices (BMPs) as described in the permit application, permit and permit factsheet. The BMPs will perform to minimize discrete discharges from the non-production areas including the land application sites. Maintenance and operation of the BMPs will be addressed in the Farm Operating Manual and evaluated during DEQ inspections.

Regarding spillways, all earthen liquid holding structures are designed with an emergency spillway. The emergency spillway is a design feature intended to protect the integrity of the structure during adverse stress and conditions beyond reasonable design criteria. The emergency spillway is at a minimum designed to only overflow if the contents of the structure extend beyond the designed holding capacity. As indicated in the secondary containment procedures, the dry/empty containments are designed to handle the contents of the largest tank at the farm or a minimum 12 hours of operation by the recycle pump. This would be the worst case scenario for a wastewater leak from the wastewater handling system.

According to the Natural Resource Conservation Service (NRCS) Practice Standard 359 Waste Treatment Lagoon<sup>3</sup>; features, safeguards, and/or management measures to minimize the risk of embankment failure or accidental release, or to minimize or mitigate impact of this type of failure should be considered when surface water bodies (perennial streams, lakes, wetlands, and estuaries) might be affected {other categories are mentioned see attachment for entire list}. Of the list of considerations provided in the practice standard for minimizing the potential for and impacts of sudden breach of embankment or accidental releases, at each of the farms, Murphy-Brown has elected to:

1. install auxiliary (emergency) spillways on the waste treatment lagoons,
2. maintain additional freeboard,
3. construct and operate secondary containments and
4. install and maintain water level indicators.

Based on the compliance history at the Murphy-Brown owned farms, all of these additional measures have proven to reduce the risk of discharges from the production areas at the farms.

### **III. Comment: The Draft Permits and Applications Do Not Provide the Full Terms of the Farm Operating Manual for Pre-Issuance Review by DEQ and the Public**

**DEQ Response:** Requiring an Operation and Maintenance (O&M) Manual is a typical permit condition added to VPDES individual and general permits. The O&M Manual, referred to as the

---

<sup>3</sup> See attachment (359\_VA\_Standard\_Waste\_Treatment\_Lagoon\_Oct\_2011\_final.pdf)

Farm Operating Manual in the VPDES CAFO individual permit, is required by permits to allow for additional details related to the daily operations and maintenance of the facility that is being covered by the permit.

In Virginia, the regulations which govern the contents of the nutrient management plan are promulgated by the Virginia Department of Conservation and Recreation (DCR). DEQ has the authority to provide VPDES permit coverage to CAFO owners. In order to incorporate the nine elements of the nutrient management plan (NMP) as specified by the federal CAFO Rule into the permit, DEQ included the elements as a permit condition. Where the nine elements are not required by the DCR NMP regulations as a NMP condition, the details for those elements (i.e.; mortality disposal and chemical handling procedures) are required to be submitted at the time of the permit application. Requiring the information to be submitted at the time of the application not only provides DEQ staff the opportunity to review and approve but it also assures the opportunity for public review and comment during the draft permit comment period. Adding this same information to the required Farm Operating Manual further establishes these procedures as part of the permit.

In order to obtain all of the information necessary to process the permit applications, DEQ developed the application addendum<sup>4</sup> to supplement the EPA application forms. The DEQ application addendum includes the requirement for the applicant to submit all information necessary to meet the Nine Elements as part of the application process. By submitting this information with the permit application, all Nine Elements of the NMP required by the 2012 CAFO Rule were available for public review and comment during the comment period, thereby assuring adherence to public participation requirements. Murphy-Brown submitted all of the required information to complete the application.

Additionally, DEQ developed the document titled "Correlation of the Nine Elements"<sup>5</sup> which was added to the fact sheet. The purpose of this document is to provide applicants with a clear understanding of which items in the permit and application correspond to EPA's Nine Elements of the NMP as required by the 2012 Final CAFO Rule.

DEQ required the other conditions to be included in the Farm Operating Manual to memorialize details related to special conditions that are not specified by the CAFO Rule. For instance, the CAFO Rule requires that Large CAFOs must inspect land application equipment for leaks; however, the condition as stated in the CAFO Rule does not specify the frequency of the required inspections. In these cases, DEQ is not able to impose more restrictive requirements than those required by the federal regulations. The Farm Operating Manual allows for the owner and DEQ staff to agree on the specifications through the approval of the manual. Furthermore, the Manual provides the mechanism to document the frequency and allow enforceability for such conditions under the draft VPDES permit.

---

<sup>4</sup> See attachments (CAFO PERMIT APPLICATION ADDENDUM.Ver.1.1pdf, CAFO PERMIT APPLICATION-ADDENDUM Attachment Chemical Handling.docx; CAFO PERMIT APPLICATION-ADDENDUM Attachment Mortality Handling.docx; CAFO PERMIT APPLICATION-ADDENDUM Attachment Best Management Practices.docx)

<sup>5</sup> See attachment (VPDES CAFO Permit FACT SHEET Attachment Correlation to Nine Elements.docx)

#### **IV. Comment: DEQ Should Remove the Draft Permits' "Bypass" and "Upset" Provisions**

**DEQ Response:** Section 9VAC25-31-190. of the VPDES Permit Regulation, titled *Conditions applicable to all permits*, outlines permit requirements which must be included in all VPDES permits. The conditions for Bypasses and Upsets are included in the permit conditions that are applicable to all VPDES permits. Where the definition of a term is not included in the permit, the definitions in section 9VAC25-31-10. of the VPDES Permit Regulation apply. The definition of "bypass" included in the VPDES Permit Regulation is identical to the EPA definition.

#### **V. Comment: The Draft Permits' Provisions for Storage Closure Must Be Clarified and Made More Stringent**

**DEQ Response:** The federal CAFO Rule lacks provisions for the proper closure of waste storage which is no longer in use by the covered facility. DEQ added this condition to the draft VPDES permits because it exists in other related DEQ AFO regulations. The storage closure condition mirrors the closure condition found in the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management **9VAC25-192-70**. DEQ has experienced no problems with the practical application of this condition.

#### **VI. Comment: The Draft Permits Should Include Water Quality Monitoring Requirements**

**DEQ Response:** DEQ did not require water quality monitoring based on the operation of the production areas and the secondary containment structures at the Murphy-Brown Farms (as described in section II). It is not necessary to require water quality monitoring when no process wastewater is allowed to be discharged from the production areas.

Discharges from the land application areas are covered by Part I. A. 1.c. of the draft VPDES CAFO permit as agricultural storm water. Agricultural Storm Water is defined by EPA in CFR 122.23 (e) as follows: "where manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge." In accordance with CFR 122.23(e), precipitation related discharges from land application areas when performed under a NMP meeting the criteria of CFR 122.42 (e)(1)(vi)-(ix) is considered agricultural storm water discharge and is thereby exempt from NPDES permit requirements. DEQ did not include requirements for water quality monitoring of agricultural storm water discharges in the draft permit because such discharges are exempt.